BEFORE THE FAIR POLITICAL PRACTICES COMMISSION

| | |
|---|---|
| In the Matter of: | |
| Opinion requested by Jeffrey A. Dennis-Strathmeyer, Counsel, Committee to Re-elect Congressman Burt Talcott | No. 75-117<br>May 4, 1976 |

BY THE COMMISSION: We have been asked the following question by Jeffrey A. Dennis-Strathmeyer, Counsel for the Committee to Re-elect Congressman Burt Talcott:

In view of the 1974 amendments to the Federal Election Campaign Act, are the reporting requirements of California Government Code Section 84208 still applicable to a candidate for election to the United States House of Representatives and the treasurer of his principal campaign committee?

## CONCLUSION

California Government Code Section 84208 is preempted by 2 U.S.C. §453. Accordingly, Congressman Talcott and the treasurer of his principal campaign committee are required to file copies of campaign statements only with those persons specified by federal law.

## ANALYSIS

Both California[1/] and federal law[2/] require candidates for federal office from California, and the treasurer of their

---

1/ Government Code Section 84208. All statutory references are to the California Government Code unless otherwise noted.

2/ 2 U.S.C. §439

principal campaign committees, to file campaign statements with the California Secretary of State. In addition, California law requires these persons to file copies of campaign statements with designated county clerks. Section 84203. Thus California law imposes a filing obligation on federal candidates and their committee treasurers not imposed by federal law.

When the Political Reform Act was approved by the voters in June, 1974, this additional obligation did not conflict with any provision of federal law. However, one of the 1974 amendments to the Federal Election Campaign Act, which became effective October 15, 1974, reads:

> The provisions of this Act and of rules prescribed under this Act supersede and preempt any provisions of State law with respect to election to federal office.
>
> 2 U.S.C. §453 (emphasis added).

It is clear that Congress has the authority to enact statutes which preempt state law, U.S. Const. Art. VI, §2, and in order to determine whether Congress has done so, it is necessary to ascertain Congressional intent. See Florida Lime and Avocado Growers v. Paul, 373 U.S. 132, 142 (1963). The Congressional intention to preempt state laws concerning campaign disclosure for federal candidates is manifest in the language of 2 U.S.C. §453, the Conference Committee Report[3/] and the repeal

---

3/ The Conference Committee Report on 2 U.S.C. §453 states:

> Conference substitute makes it clear that federal law occupies the field with respect to criminal sanctions relating to limitations on campaign expenditures, the sources of campaign funds used in federal races, the conduct of federal campaigns, and similar offenses but does not affect the states' right to prohibit false registration, voting fraud, theft of ballots, and similar offenses under state law.
>
> Senate Conference Report 93-1237 (October 7, 1974), 3 U.S. Code Cong. & Adm. News 1974, at 5637.

of a provision in the federal act which urged cooperation between state and federal officials in the administration of potentially overlapping laws.[4/]

In addition, the Fair Political Practices Commission has obtained an opinion of counsel from the Federal Election Commission which states:

> State laws which provide for the manner of qualifying as a candidate or the dates and places of elections or which prohibit false registration, voting fraud, theft of ballots and similar offenses are not superseded by Federal law. H.R. Cong. Rep. No. 93-1438, 93d Cong., 2d Sess. 69, 100-101 (1974). However, Federal law clearly occupies the field with respect to the organization and registration of political committees supporting Federal candidates and the disclosure of receipts and expenditures of Federal candidates and committees.
>
> The specific provision of the California Code with respect to which you request an opinion requires the filing of statements of receipts and expenditures not only with the Secretary of State but also with various county clerks throughout the state, depending on the Federal office sought. It is my opinion that this provision is preempted by the Federal Election Campaign Act of 1971, as amended. 2 U.S.C. §§439, 453.
>
> Letter from John G. Murphy, Jr., General Counsel, Federal Election Commission (March 19, 1976).

---

4/ Prior to its repeal in 1974, 2 U.S.C. §438(b) provided:

> The supervisory officer shall encourage, and cooperate with, the election officials in the several States to develop procedures which will eliminate the necessity of multiple filings by permitting the filing of copies of the Federal reports to meet State requirements.

In light of the foregoing, we conclude that 2 U.S.C. §453 represents an abandonment of the former federal policy of permitting states to require additional filings of reports in favor of a policy of removing states from participation in this facet of federal campaign regulation. Accordingly, Congressman Talcott and the treasurer of his principal campaign committee need not comply with the requirements of California Government Code Section 84208.

Approved by the Commission on May 4, 1976.
Concurring: Brosnahan, Carpenter, Lapan, Lowenstein and Quinn.

Daniel H. Lowenstein
Chairman